

PHILIP MORRIS, U.S.A.

Attachment B  
Copy to T. Williams  
Let us discuss! 15  
INTEROFFICE CORRESPONDENCE

120 PARK AVENUE, NEW YORK, N.Y. 10017

TO: Distribution

DATE: November 11, 1982

FROM: J. P. Jeb Lee

SUBJECT: UNSALEABLE CIGARETTES - YEAR END 1982

We have received the attached from the Department of the Treasury. At this time, Mr. Higgins' memo represents all that we know officially about the handling of unsaleables.

We do not know, at this moment, how long it will be before the complete regulations are published, or whether some of the issues dealt with in Mr. Higgins' memo can ever be solved short of legislation. (It is our understanding that Congressional action will be needed to correct some problems and that "a manufacturer" is working on legislative language to remedy the situation.) At any rate, the unsaleable merchandise situation appears to be divided into two sections:

1. Those actions we would take to deal with situations between us and our customers; and
2. Actions which will be necessary between us and the Treasury Department regarding refunds on unsaleable merchandise.

Item 2 is outside the range of my involvement, so I would like to deal with Item 1.

In this connection, here are some recommendations:

- a. We should inform our customers, as well as our sales force, regarding unsaleable merchandise handling guidelines as well as any appropriate policies regarding year end business.

- b. We should attempt to get our customers to ship unsaleables by Friday, December 17, 1982. This should provide time for the cigarettes to be back in Richmond prior to December 31, 1982.

If they can be destroyed before year end there would be no floor tax liability and, consequently, the refund at the \$4 per thousand rate is pretty straight forward.

big influx of  
returned goods

must be  
quickly destroyed

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For any shipments that do not arrive in Richmond by December 31, but that are shipped from our customers' place of business prior to that date, we would be liable for the floor tax and since we would be the party paying the tax, we would then be in a position to request reimbursement at the \$8 per thousand rate.

(It appears, at this time, that only that unsaleable merchandise for which we paid the floor tax would be eligible for reimbursement. This situation may be changed as a result of some legislative activity.)

The reason why we would be liable for the floor tax in the above "in-transit" situation is based on BATF's position that the owner of in-transit merchandise is responsible for the floor tax.

There are several similarities to support the contention that title to unsaleable merchandise passes from the customer to us when that customer turns the shipment of unsaleables over to a carrier consigned to Philip Morris. Since we pass title to our customers when we release shipments, and since we consider unsaleable merchandise credits based on the list prices in effect at the time the customer ships the unsaleables to us, it is only right that we accept title to unsaleables when the customer releases them to the carrier.

- c. Our field sales force should make every effort to contact all possible customers and assist them, where possible, in preparing their final unsaleable shipments for the year.

This is a small issue considering the total industry year end situation but this issue looms large in the minds of our customers if the number of telephone calls we have been receiving is any indication.

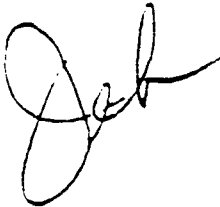
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November 11, 1982

- d. I believe that the forwarding of a circular, similar to the attached draft, will not only encourage customers not to wait until the last minute but will also assist in the case of some customers who already feel that they are not going to take back any unsaleables after the first of December. *Circular # 47*  
*11/13/82*
- e. There exists the possibility that some customers may attempt to transfer the year end floor tax responsibility from themselves to us by attempting to return cases of saleable merchandise to our warehouses immediately prior to the end of the year.

For the benefit of the field sales force and our customers, we should resolve this situation quickly and I will be contacting you for your reactions to these recommendations.

JPJL:it  
Attachment  
cc: M. W. Murphy  
R. E. Pruehsner  
G. O. Sledge



Distribution

~~R. N. Beane~~  
A. J. Bissmeyer  
R. H. Cremin  
J. J. Morgan  
F. Newman

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